
TENNESSEE DEPARTMENT OF
FINANCIAL INSTITUTIONS



LEGAL DIVISION

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The **LEGAL DIVISION** provides legal advice and representation for the Department. This Division consists of a General Counsel, two staff attorney positions, and a Legal Assistant.

The Department's lawyers advise the Commissioner and departmental personnel in all legal matters affecting the Department. They work with regulated entities and the general public in addressing legal issues. They also work closely with the Governor's Office and the Tennessee General Assembly on legislative issues affecting financial institutions. The Legal Division also assists in the coordination of enforcement initiatives with other federal and state regulators as well as with various law enforcement agencies.

The Legal Division was heavily involved in the 2001 Legislative session as the Department's legislative liaison by tracking numerous bills, working closely with the Governor's Office, the General Assembly, and other groups sponsoring legislation which impacted the Department. This Division provided assistance to our operating divisions on issues involving bank and trust company operations including interstate transactions, bank and credit union applications, money transmission, check cashing, deferred presentment, mortgage companies, and credit union field of membership, plus several other issues. The Legal Division is significantly involved in the day-to-day decision making process of the Department.

BILLS IMPACTING THE DEPARTMENT

Public Chapter	54
Amends	T.C.A. Title 45, Chapters 1 and 2
Effective Date	April 4, 2001

Public Chapter 54 is essentially a clean up and modernization law. In part, it addresses the federal Gramm-Leach-Bliley financial modernization law ("Gramm-Leach") passed by Congress in 1999. This law updates or clarifies a number of provisions in the Banking Act and one provision in the Savings Bank Act by relieving regulatory burden and making a number of technical amendments. The following summarizes the major amendments:

- Clarifies the authority of the Commissioner of Financial Institutions to share confidential bank examination information with other regulators. This is particularly important in light of the "functional regulation" scheme to be implemented under Gramm-Leach.
- Conforms the statutory formation of new state banks to existing practice.
- Updates the Commissioner's authority to deal with potential employee conflicts of interest by authorizing the Commissioner to establish clear ethical guidelines and when employees must be recused from official duties. This is important in lieu of consolidations in the financial services industry which were not contemplated when the original law was passed in 1969.
- Permits 1 and 2 rated banks to file a written notification for a new branch rather than an application.
- Conforms the Banking Act to federal law and state regulatory practice by recognizing that out of state federally chartered institutions, and out of state chartered institutions on a reciprocal basis, may establish ATMs in Tennessee. However, the prohibition against non-banks establishing ATMs on their own is retained.

TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS

- Permits state banks to comply with state law relative to the submission of call reports by filing the call report as required by federal regulatory agencies.
- Provides greater operating clarity and flexibility for state banks by updating sections relating to bank capital, dividends, external auditing requirements, loans to officers/directors, charter amendments and lending under the Credit Card Bank Act.
- Clarifies the Savings Bank Act and reinforces the position that acquiring substantially all of the assets of a savings bank without acquiring the charter renders the institution's certificate of authority null and void.

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Public Chapter **165**
Amends **Title 45, Chapters 5, 13, and 17**
Effective Date **July 1, 2001**

Public Chapter 165 amends both the Industrial Loan and Thrift Companies Act (TILT Act) and the Residential Lending Brokerage and Servicing Act (Mortgage Act). The following briefly summarizes the laws most significant provisions.

- Consolidates all mortgage brokering activity under the Mortgage Act. Because, under prior law, some mortgage brokers operated under the TILT Act and others operated under the Mortgage Act, confusion existed among lenders to whom mortgage loans were brokered regarding what loan fees were permissible.
- Adds a bond requirement for TILT registrants. There was no bond requirement. Thus, there was no protection for a consumer in the event, for example, a TILT registrant collected loan fees in advance and subsequently went out of business.
- Increases the bond amount for Mortgage Act licensees.
- Requires licensees/registrants under both Acts to report the occurrence of events such as felony indictment of an officer or director, the initiation of revocation proceedings by another state, etc., thereby alerting the commissioner to potential problems of licensees/registrants.
- Authorizes commissioner to suspend or bar individuals from employment, management or control of licensees/registrants under both Acts. Under former law, there was nothing to prevent a wrongdoer from leaving one licensee/registrant to simply go to work for another licensee/registrant.
- Provides greater operating flexibility by adding sections to both Acts relating to changes of control and by allowing Mortgage Act licensees/registrants to maintain records at any location.
- Cleans up and clarifies both Acts by making a number of technical amendments relating to time periods for filing renewal applications, reporting changes of officers, directors and addresses, affording hearing opportunities, and record retention requirements.

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TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS

Public Chapter **5**
Amends **T.C.A. Section 45-17-112**
Effective Date **July 1, 2001**

Public Chapter 5 allows deferred presentment servicers to collect court costs and handling charges on checks returned for insufficient funds, on closed accounts or because of a stop pay order. These additional handling fees and court costs would not apply if the customer pays the full amount of the check within 10 days of receiving notice from the licensee. Attorney's fees relating to collection of the check are not permitted.

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Public Chapter **184**
Amends **T.C.A. Section 56-37-111**
Effective Date **July 1, 2001**

Public Chapter 184 amends TCA §56-37-111(a) relative to Premium Finance Companies by specifying penalties to be imposed on an insurer for failing to timely remit an unearned premium.

It provides that an insurer, who fails to timely remit the unearned premium, shall be liable for any interest or finance fees assessed against the policy holder.

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Public Chapter **156**
Amends **Title 45, Chapter 10**
Effective Date **May 3, 2001**

Public Chapter 156 amends TCA, Title 45, Chapter 10 relative to financial records privacy. Chapter 10 generally addresses whether a "financial institution" may disclose "financial records" to third parties. Section 45-10-103 establishes when a financial institution may disclose protected information without obtaining the authorization of the customer or under a lawful subpoena. Public Chapter 156 adds an item authorizing a financial institution to disclose records to the extent permitted by the federal Gramm-Leach Bliley Act passed by Congress in 1999. That federal law specifically addresses privacy issues by requiring the establishment of privacy policies, when privacy notices must be given and requiring when institutions must give customers an opportunity to opt-out of disclosure of customer information to unaffiliated third parties.

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Public Chapter **140**
Amends **Title 45, Chapters 2 and 3**
Effective Date **July 1, 2001**

Public Chapter 140 amends the Tennessee Banking Act to permit out-of-state banks to establish de novo branches in Tennessee. This law allows out-of-state banks to simply establish a branch in Tennessee, rather than having to acquire a branch, if the other state in question will allow Tennessee banks to do the same. A de novo branch is defined as essentially one where the branch is originally established by the bank and is not one that is obtained by acquisition or as a result of conversion or merger. The Tennessee Savings and Loan Act is also amended at T.C.A. Section 45-3-301 to clarify that out-of-state savings and loan associations and savings banks may also establish de novo branches in Tennessee if the other state in question will permit Tennessee savings institutions to establish branches there.

TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS

RULEMAKING

Amendment to Chapter 0180-7

Rules of Practice: Applications, Instructions, Forms, Reports of State Banks and Schedule of Application Fees for State Banks, BIDCO's, Savings Banks and Trust Companies

Effective Date: February 28, 2001

Relevant changes to Chapter 0180-7 are as follows:

- Establishes fees authorized by the 1999 legislation governing trust companies.
- Increases fee from \$1500 to \$3000 for an application for a merger where the resulting institution will be a state chartered bank, state chartered savings bank, state trust company, or state BIDCO and any change of control application.
- Sets a flat fee of \$1000 for an application by a state bank, savings bank, or state trust company to engage in securities activities.
- Makes it clear that subscription proceeds collected from subscribers in new banks must be placed in an escrow account.
- Clarifies that when substantially all of a bank's assets are purchased without acquiring a bank's charter, the bank's certificate of authority is null and void.
- Provides that, in a merger, where an interim bank is the surviving bank, the interim bank takes the age of the existing bank.

New Rule – Chapter 0180-29

Credit Union Field of Membership Expansions

Effective Date: November 28, 2001

Essentially, this rule puts into practice many of the policies the Department has utilized in approving field of membership amendments and outlines the application requirements.